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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,454	02/07/2001	Fumin Lu	8988.3826	3410
22235	7590	03/01/2004	EXAMINER	
MALIN HALEY AND DIMAGGIO, PA 1936 S ANDREWS AVENUE FORT LAUDERDALE, FL 33316			BOYD, JENNIFER A	
		ART UNIT		PAPER NUMBER
		1771		

DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/778,454	LU, FUMIN	
Examiner	Art Unit		
Jennifer A Boyd	1771		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 12 December 2003.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-8 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-8 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 20, 2003 has been entered.

### ***Response to Amendment***

2. The Applicant's Amendments and Accompanying Remarks, filed December 12, 2003, have been entered and have been carefully considered. Claims 1 and 7 are amended and claims 1-8 are pending. The invention as currently claimed is not found to be patentable for reasons herein below.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 - 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 2 – 6 and 8 are rejected as being dependent on rejected claims 1 and 7.

6. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 1 and 7 recite the broad recitation "having a melt flow rate in grams/10 minutes at 230 degrees Centigrade greater than 200", and the claim also recites "and preferably between 30 and 750" which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 102***

7. Claims 7 – 8 remain rejected under 35 U.S.C. 102(e) as being anticipated by Ofosu et al. (US 6,268,302). The details of the rejection can be found in paragraphs 4 – 5 of Paper No. 2.

8. The amendment to claim 7 which requires that the polypropylene resin has a melt flow rate in grams/10 minutes at 230 degrees centigrade is greater than 200 and preferably between 350 and 750 still is encompassed by Ofosu et al. (US 6,268,302). Ofosu et al. teaches that one web is made from a polymer with a melt flow rate greater than 50 grams/ 10 minutes at 230 degrees Celsius (column 1, lines 45 - 55) which can include the range of 200 grams/ 10 minutes and higher and the range between 350 and 750.

***Claim Rejections - 35 USC § 103***

9. Claims 1 – 2 and 3 – 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu (US 5,688,468) in view of Ofosu et al. (US 6,268,302).

10. The amendment to claim 1 which requires that the polypropylene resin has a melt flow rate in grams/10 minutes at 230 degrees centigrade is greater than 200 and preferably between 350 and 750 still is encompassed by Ofosu et al. (US 6,268,302). Ofosu et al. teaches that one web is made from a polymer with a melt flow rate greater than 50 grams/ 10 minutes at 230 degrees Celsius (column 1, lines 45 - 55) which can include the range of 200 grams/ 10 minutes and higher and the range between 350 and 750.

***Response to Arguments***

11. Applicant's arguments filed April 6, 2003 have been fully considered but they are not persuasive.

12. In response to Applicant's argument that Ofosu does not teach the newly amended limitation of the polypropylene resin having a melt flow rate of 200 grams / 10 minutes at 230

degrees Centigrade and preferably between 350 and 750, the Examiner respectfully argues the contrary. Ofosu teaches an open-ended range for the melt flow rate of 50 grams/ 10 minutes **or higher**. Although the highest example given by Ofosu does not exceed 110, the examples do not limit Ofosu's melt flow rate range. They are merely examples. Ofosu does not set a high end of the range of melt flow rates, so it is reasonable to say that the range of Ofosu and the range of the Applicant can overlap. The Applicant emphasizes that the melt flow range of Ofosu is **preferably** in the range from about 50 grams / 10 minutes at 230 degrees Centigrade to about 150 grams /10 minutes at 230 degrees Centigrade. The Applicant should note that such a range is **preferred** but the Applicant more broadly states that the range for the melt flow rate is 50 grams/ 10 minutes **or higher**. It should be noted that by adding a narrow range (i.e. between 350 and 750) to a broad range (i.e. greater than 200) to claims 1 and 7, the claims are rendered indefinite. It is unclear whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. If Applicant's range has unexpected results, it is suggested that the Applicant submit a 1.132 Declaration to indicate why the Applicant's disclosed range has unexpected results and therefore cannot be encompassed by Ofosu's broad range.

13. In response to Applicant's argument that the '302 patent is completely different than the invention taught and claimed in the Applicant's invention, the Examiner respectfully argues the contrary. It should be noted that Applicant's language requires **at least one layer** (meaning one layer would suffice) drawn above 4,000 meters per minute and with a melt flow rate of 200 grams / 10 minutes. Ofosu teaches that at least one layer (i.e. one layer) has met the requirements of the Applicant. It should be noted that the Applicant uses the transitional phrase "including".

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According to the MPEP, the transitional term “including” is synonymous with “comprising,” “containing,” or “characterized by,” which is inclusive or open-ended and **does not** exclude additional, unrecited elements or method steps. See, e.g., Genentech, Inc. v. Chiron Corp., 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997). Therefore, the use of “including” does not preclude the presence of an additional layer comprising a polymer with a low melt flow rate. Also, claim 2 does not specify how many layers contain a polymer with a melt flow rate higher than 200 grams / 10 minutes. Therefore, the combination of a high melt flow rate polymer spunbonded layer and a low melt flow rate polymer spunbonded layer would comply with the Applicant’s limitations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer Boyd  
February 11, 2004

  
**Ula C. Ruddock**  
Primary Examiner  
Tech Center 1700